IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2447 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made tJJJJJ : NO

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out of suo motu proceedings under section 84C of the Bombay Tenancy and Agricultural Lands Act,1948 under the following circumstances :

The respondent No.2 Udaji Maganji Thakor was the owner of the land bearing survey no.64 admeasuring 2 acres 17 guntahs of village Vavol, district Gandhinagar. The respondent No.1 purchased the said land from respondent No.2 by a registered sale-deed dated 24.4.1981. Entry was made in the revenue record and the same was cancelled by Circle Inspector on 24.5.1983 on the ground that the land in question was a fragment within the meaning of Bombay Prevention of Fragmentation Act,1947. The petitioner challenged the said order of cancellation of entry by filing an appeal before the Prant Officer who by his order dated 29.8.1986 allowed the appeal and set aside the order of Circle Inspector dated 24.5.1983 cancelling the entry. The effect was that the land stood mutated in the name of the respondent no.1 in the revenue record.

In the meantime the Government had initiated proceedings for acquisition of the said land along with other lands by issuing notification dated 30.6.1983 under section 4 of the Land Acquisition Act. The award under section 11 of the Act was made on 22.9.1986. It is not in dispute that the possession of the land was taken under section 16 of the Act on 12.11.1986.

Thereafter, on 26.12.1986 the Circle Inspector submitted a report that the sale of the land by respondent no.2 in favour of respondent no.1 was in violation of section 63 of the Bombay Tenancy and Agricultural Lands Act. Therefore, the Mamlatdar initiated proceedings under section 84C of the Tenancy Act and issued notices to the respondents. The Mamlatdar by his order dated 24.3.1987 held that the respondent no.1 did not hold agricultural lands within the distance of 8 kms. from the land in question and hence he could not be said to be an agriculturist as defined in the Act. The sale was therefore, in breach of section 63 of the Tenancy Act. He, therefore, declared the same to be invalid and the land to be vested in the Government free from all encumbrances.

The respondent No.1 being aggrieved by the said order of the Mamlatdar filed an appeal before the Deputy Collector, Gandhinagar who by his order dated 4.12.1987 dismissed the same and confirmed the order of the Mamlatdar.

The respondent No.2 thereafter filed revision application before the Gujarat Revenue Tribunal. The Tribunal by its judgment and order dated 25.2.1993 allowed the revision application and set aside the orders passed by the Mamlatdar and the Deputy Collector. It is the said judgment and order of the Gujarat Revenue Tribunal which is under challenge in this petition filed by the State of Gujarat.

The Tribunal allowed the revision application on three grounds :

First, the Tribunal referred to the Government resolution dated 29.4.1980 which says that the agriculturists within the meaning of section 2(2) of the Act could purchase the agricultural lands within the State of Gujarat. It appears that another resolution was issued on 20.5.1982 prescribing that the land should be within the same village or should be a compact block and should not be at distance of more than 5 miles. However, the respondent no.1 had purchased the land between these two dates and the proceedings initiated by the Mamlatdar were against the resolution dated 29.4.1980. Secondly, the Tribunal relying on the decision of this Court in Special Civil Application No. 2770 of 1979 came to the conclusion that in the facts and circumstances of the case the proceedings had been initiated beyond reasonable period. The third ground was that the suit land had already been acquired by the State Government for the township of the Gandhinagar and the Mamlatdar could not order the land to be vested in the Government when it had already vested in the Government under the Land Acquisition Act.

Now it is well settled that the suo motu powers under section 84C of the Tenancy Act have to be exercised within reasonable period. What is reasonable period, ofcourse, depends upon the facts of the case. Shri L.R.Poojari, learned Assistant Government Pleader on behalf of the petitioner contended that the Tribunal had committed an error in coming to the conclusion that in the facts of the present case suo motu powers had been exercised beyond reasonable period. The Tribunal held that the date to be considered was 24.8.1981 when the applicant purchased the land. Shri Poojari submitted that the time should be counted from the date of the judgment in respect of the entry from the date of the order made by the Deputy Collector dated 4.12.1987 whereby he allowed the appeal filed by the respondent no.1 and set aside the order of the Circle Inspector dated 24.4.1983 cancelling the entry made in the revenue

record. However, the very fact that the entry was cancelled in May,1983 on the ground that the land in question shows that the authority was very much aware of the transaction in question and the Mamlatdar could have certainly initiated the proceedings under section 84C of the Act. In the meantime, the Government proceeded to acquire land on the basis that it belonged to respondent no.1. Once the possession of the land was taken on 5.11.1986 under section 16 of the Land Acquisition Act the effect was that it vested absolutely in the Government free from all encumbrances. Thereafter, there was no question of the land being vested again in the Government by a declaration made by the Mamlatdar. In the circumstances, the Tribunal cannot be said to have committed an error of law in coming to the conclusion that since the land was already vested again in the Government under the Land Acquisition Act, it could not again be ordered to be vested in the Government in proceedings under section 84C of the Act. There is no warrant for interference in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India. The petition, therefore, fails and is dismissed. Rule discharged. No order as to costs.

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m.m.bhatt